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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,213	08/30/2001	Gerald B. Strait	POU920010075USI/132-0003	8861

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Philmore H. Colburn II  
Cantor Colburn LLP  
55 Griffin Road South  
Bloomfield, CT 06002

EXAMINER
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WOOD, WILLIAM H

ART UNIT	PAPER NUMBER
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2124

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/943,213

Applicant(s)

STRAIT ET AL.

Examiner

William H. Wood

Art Unit

2124

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-39 are pending and have been examined.

#### *Specification*

1. The amendment filed 09 September 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: paragraphs 16A and 16B along with figure 3. Applicant is required to cancel the new matter in the reply to this Office Action.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5-6, 8-9, 11-16, 18-19, 21-22, 24-29, 31-32, 34-35 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Berry et al.** (USPN 6,678,883) in view of **Dryfoos et al.** (USPN 6,598,180) as stated in the previous Office Action mailed 04 June 2004.

4. Claims 4, 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Berry et al.** (USPN 6,678,883) in view of **Dryfoos et al.** (USPN 6,598,180) in

further view of **Bryant et al.** (USPN 6,728,949) as stated in the previous Office Action mailed 04 June 2004.

5. Claims 7, 20 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Berry et al.** (USPN 6,678,883) in view of **Dryfoos et al.** (USPN 6,598,180) in further view of **Baumgartner et al.** (USPN 5,121,501) as stated in the previous Office Action mailed 04 June 2004.

6. Claims 10, 23 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Berry et al.** (USPN 6,678,883) in view of **Dryfoos et al.** (USPN 6,598,180) in further view of Applicant Admitted Prior Art as stated in the previous Office Action mailed 04 June 2004.

### ***Response to Arguments***

7. Applicant's arguments filed 09 September 2004 have been fully considered but they are not persuasive. Applicant argued: <sup>1)</sup> **Berry** and **Dryfoos** are nonanalogous art; <sup>2)</sup> **Berry** fails to disclose trace data flag; <sup>3)</sup> **Dryfoos** teaches away from combination with **Berry**; <sup>4)</sup> **Dryfoos** fails to address the problem of Applicant's claimed invention; and <sup>5)</sup> the combination is "inoperative by not solving the problem addressed by the claimed invention". The above arguments are not persuasive.

First, **Berry** is clearly directed to performance analysis of computer programs (column 1, line 25 to column 4, line 16; column 1, lines 27-28), which is directly in line

with Applicant's claim 1, line 1. Furthermore, **Berry** utilizes trace data (column 3, lines 52-53), also in accordance with Applicant's claim 1. Addition of symbolic data does not differentiate the similar fields of endeavor. Tracing is a form of debugging, which is **Dryfoos'** field of endeavor. Thus, the cited prior art is analogous.

Second, under the broadest reasonable interpretation of Applicant's claim language "trace data flag" does read upon the cited prior art. The prior art flag clearly indicates a relationship with the analysis system (column 25, lines 27-33). Analysis of the cited prior art must then involve both **Berry** and **Dryfoos**, in which the previous Office Action clearly stated were in combination. **Dryfoos** taught selective debug/tracing of modules base upon a flag. **Berry** (which in column 25, lines 34-42 indicated selective outputting of a trace) was modified accordingly to selectively trace. Thus, the combined prior art disclosed Applicant's invention as currently claimed.

Third, in combination with **Berry**, the combination clearly debug/traces selectively as previously mentioned (**Berry**: column 25, lines 34-42). Furthermore, whether **Dryfoos** debug/traces with and without registration is irrelevant to the broadest reasonable interpretation of Applicant's claimed invention. The claims do not discuss what happens if the trace flag is off. Thus, **Dryfoos** does not teach away.

Fourth, as discussed above, **Dryfoos** is relevant in so much as it pertains to debugging/tracing and as in combination with **Berry**.

Fifth, Applicant's argument is not immediately understood. The test for operability is not directly based upon Applicant's claimed invention.

Art Unit: 2124

Having addressed Applicant's cited concerns, the rejections are maintained for the above argued claims and all other related or dependent claims.

8. Finally, except as noted above under Specification section, the objection to the drawings, abstract and claims of Office action mailed 04 June 2004 are withdrawn.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

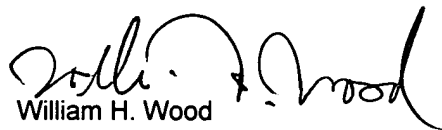
Art Unit: 2124

***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally be reached 9:00am - 5:30pm Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571)-272-3719. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.



William H. Wood  
February 16, 2005



**KAKALI CHAKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100**